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October 16, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 02-33

Dear Ms. Dortch:

The attached ex parte was filed yesterday in CC Docket 01-338. At the request of Cathy Carpino of the Wireline Competition Bureau's Competition Policy Division, please also associate this ex parte with CC Docket 02-33.

I am electronically filing this notice and the accompanying attachment and request that you associate this notice with the record of the proceeding listed above.

Sincerely,

W.W. Jordan - pell

W. W. Jordan

Attachments

cc: Rob Tanner
Julie Veach
Daniel Shiman
Kimberly Vander Haar
Jeremy Miller
Cathy Carpino
Brent Olson

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October 15, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 01-338

Dear Ms. Dortch:

On October 15, 2002 Pete Martin, Steve Earnest, Bob Blau and the undersigned, all representing BellSouth, met with Rob Tanner, Jeremy Miller, Julie Veach, Cathy Carpino, Daniel Shiman and Brent Olson from the Competition Policy Division of the Wireline Competition Bureau in connection with the above referenced proceeding. During this meeting, BellSouth explained why the Commission should not create UNEs for broadband and why the Commission should remove all existing UNE requirements for line sharing, line splitting and packet switching. BellSouth provided data that demonstrated the competitiveness of the broadband market and that unregulated providers dominate this market. Based on the current market as well as the future market for broadband, the Commission cannot continue to regulate the incumbent local exchange carriers' broadband services while their competitors operate with regulatory freedom. The attached material was used during this meeting.

I am electronically filing this notice and the accompanying attachment and request that you associate this notice with the record of the proceeding listed above.

Sincerely,

W. W. Jordan

Attachments

cc: Rob Tanner
Julie Veach
Daniel Shiman
Kimberly Vander Haar
Jeremy Miller
Cathy Carpino
Brent Olson

Triennial UNE Review - Broadband

BellSouth

October 15, 2002

The Commission Must Take Necessary Steps to Ensure Broadband Deployment Continues

- No unbundled network elements (UNEs) for broadband
  - Commission should not create UNEs for broadband
    - Section 251 should not apply to broadband facilities
    - Broadband market is highly competitive
    - Critical deployment will be hampered
  - Commission should remove all existing UNEs related to broadband
    - Line sharing
    - Line splitting
    - Limited packet switching

- Commission must also use current broadband proceedings to ensure that regulations that apply to providers of broadband services are uniform across all platforms
  - Find ILECs non-dominant in the provision of broadband services
  - Eliminate the *Computer Inquiry* obligations on BOCs when providing broadband services
  - Allow ILECs that offer a stand-alone broadband transmission service to do so on a private carriage basis rather than as common carriage

- A unified national broadband policy is necessary for widespread deployment
  - Commission should preempt state regulation over broadband services
  - Unless the Commission preempts the states, providers will face differing policies and procedures in each state in which it operates
  - In state proceedings, CLECs have attempted to unbundle packet switching in all 9 BellSouth states
  - Alabama, Florida, Georgia, Kentucky, Louisiana, and Tennessee have required or are considering requiring provision of DSL over UNE-P

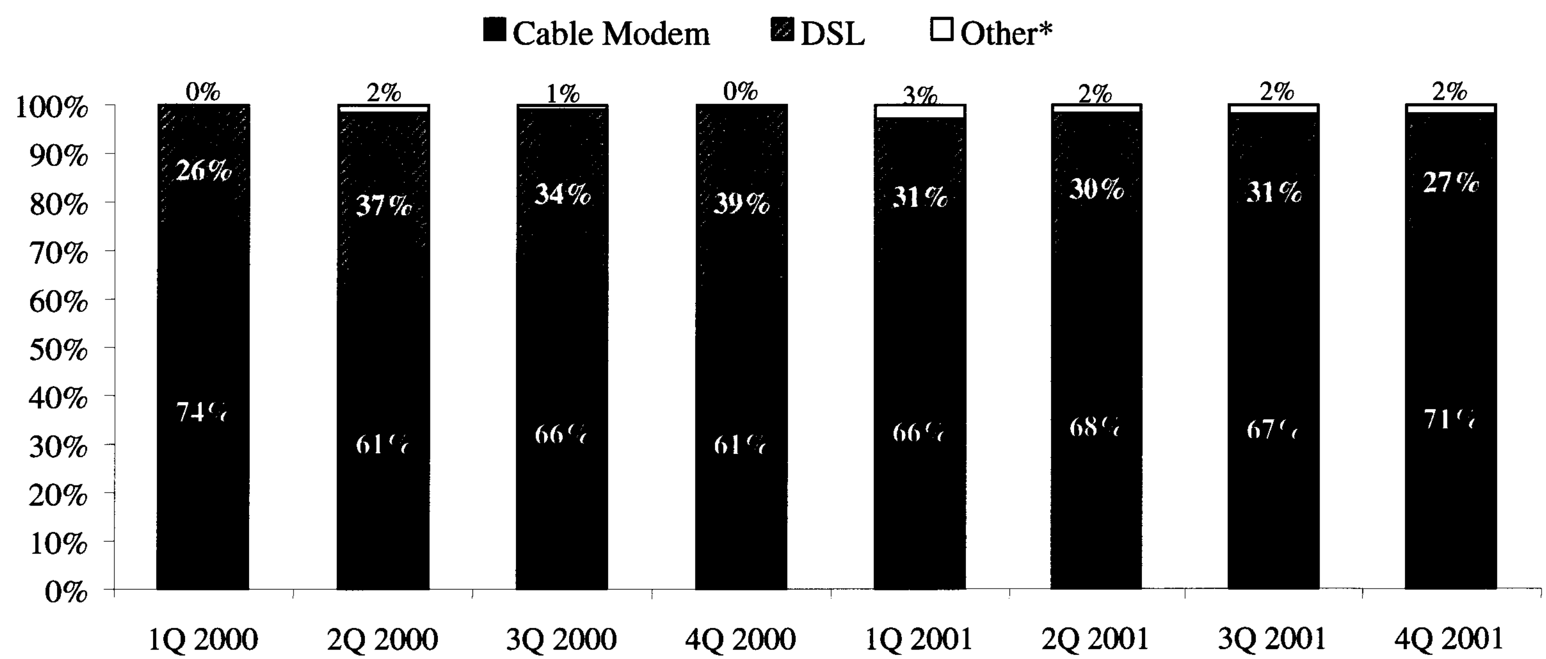
Unbundling Obligations Should Not Apply to Broadband

- Congress created the unbundling requirements of Section 251 as an entry path into the local exchange market – not into the already competitive broadband market
- Even if the Commission applies Section 251 to broadband services, it must consider the competitiveness of the market and the impact unbundling will have on future investment
- The D.C. Circuit Court confirmed the importance of competition in the broadband market when undertaking any unbundling impairment analysis
- Both the Supreme Court and the D.C. Circuit Court have emphasized that the Commission must consider the cost of mandatory unbundling, "including disincentives to research and development by both ILECs and CLECs and the tangled management inherent in shared use of a common resource"
- The Commission cannot inflict on the economy the investment disincentives that will incur through broadband unbundling when doing so will bring no significant enhancement of competition in an already competitive environment

Competitiveness of the High-Speed Internet Market Today

- The high-speed Internet market is undeniably competitive today
- Cable is the clear leader in the broadband market by a wide and growing margin
- The Commission itself has acknowledged that numerous carriers are providing broadband over various modes
  - One provider, cable modem providers, doubles its next closest competitor in market share
- As of year-end 2001, there were approximately 7.5 million cable modem subscribers in the U.S., compared to 3.3 million residential DSL subscribers

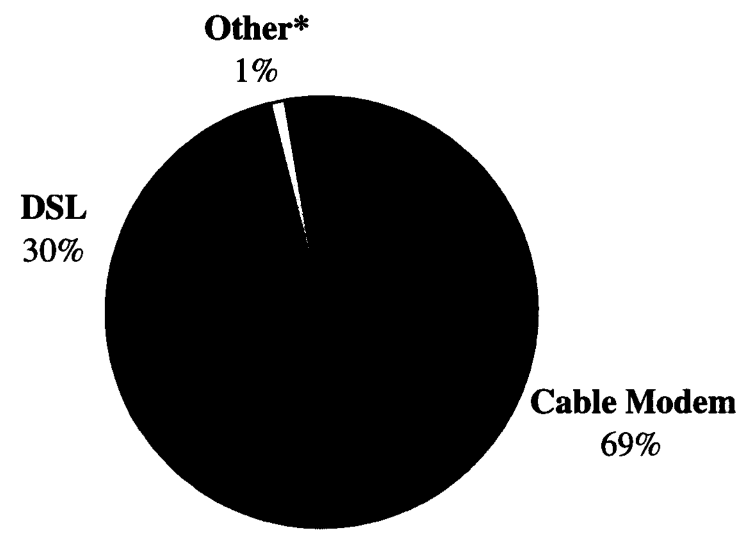
Market Share of New Residential Broadband Subscribers Added Quarterly



*Satellite and fixed wireless.

Sources: Salomon Smith Barney, FCC, Kinetic Strategies, Morgan Stanley Dean Witter, and TeleChoice.

Market Share of Residential Broadband Subscribers (Year-End 2001)

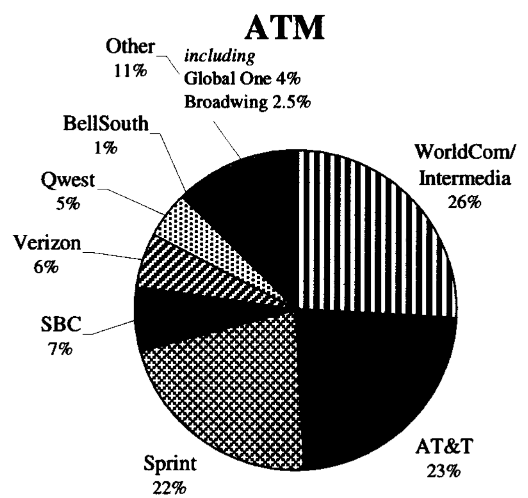


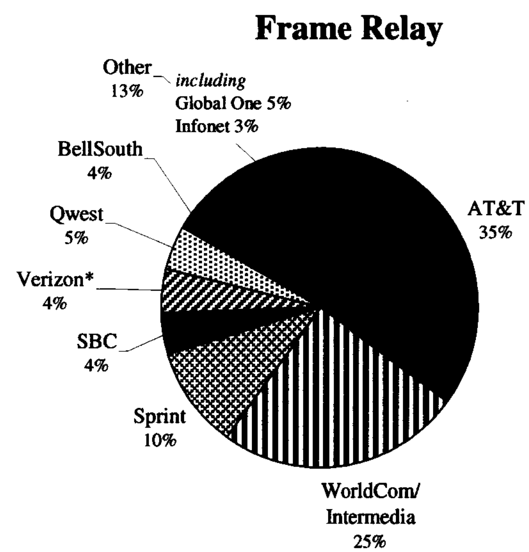
*Satellite and fixed wireless.

Sources: Salomon Smith Barney, Morgan Stanley Dean Witter, and TeleChoice.

Other Broadband Technologies are Also Highly Competitive

Market Share of Nationwide ATM and Frame Relay Revenues





*Bell Atlantic share. GTE share included in "Other."

Source: R. Kaplan, IDC, *U.S. Packet/Cell-Based Services Market Forecast and Analysis, 2000 - 2005*

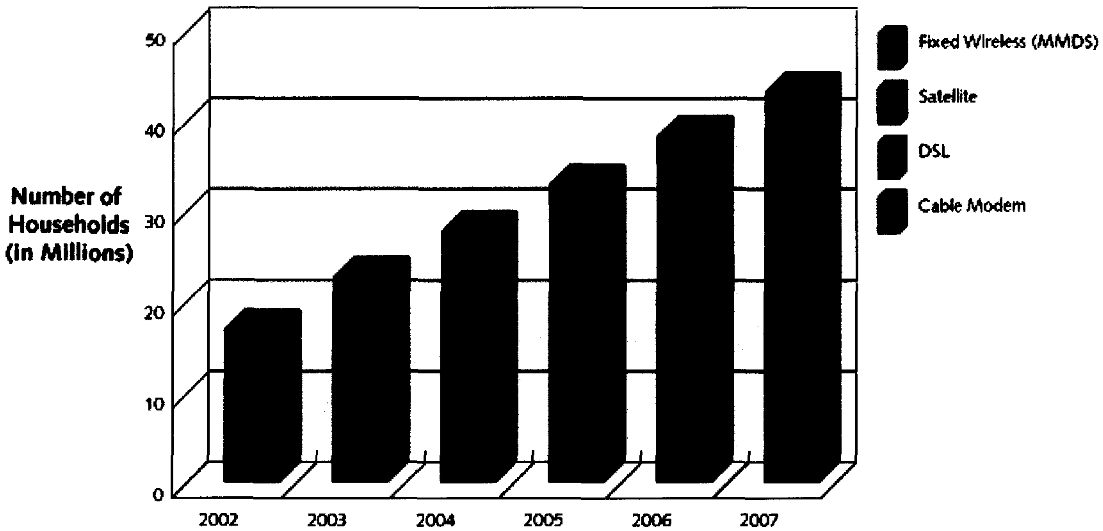
Competitiveness of the High-Speed Internet Market Going Forward

- Cable modem providers will continue to lead the high-speed Internet charge

- According to a report released by The Yankee Group in May 2002, cable modem providers will rule the broadband age, at least for the next five years
  - DSL technology will remain in second place due to regulatory hurdles

- The Yankee Group predicts that by the year 2007, over 41 million households will have broadband services
  - Of these households, 24.2 million will have cable modem service, and 13.8 million will have DSL service

Residential Broadband Subscriber Forecast



	2002	2003	2004	2005	2006	2007
Fixed Wireless	45,000	66,000	120,000	177,000	248,000	308,000
Satellite	247,000	530,000	1,264,000	2,030,000	2,700,000	3,350,000
DSL	5,120,000	6,733,000	8,435,000	10,187,000	12,087,000	13,839,000
Cable Modem	10,607,000*	13,930,000*	16,907,000*	19,649,000*	21,975,000*	24,229,000*
Total	16, 019,000	21,259,000	26,726,000	32,043,000	37,010,000	41,726,000

**Note: Cable modem numbers include businesses subscribing to residential class service.*

Source: The Yankee Group

Regulation Unfairly Punishes ILECs in a Competitive Market

- The unregulated providers now dominate the market
  - Cable modem providers serve almost 70% of the residential market, yet ILECs are the providers heavily regulated in this nascent market

- The Commission cannot in good faith continue to regulate one provider of broadband – ILECs – with a heavy hand while all other providers operate with regulatory freedom
  - ILECs
    - Must file tariffs to establish rates, terms, and conditions under which they deal with their customers
    - Must unbundle their network for competitors to use
    - Must allow collocation on their premises
    - Must allow access to loop facilities on a shared basis with their competitors
    - Must adhere to structural and non-structural accounting safeguards when providing multiple services to a customer
    - Are subject to price regulation
  - Cable Modem Providers – none of the above!

- There are no differences in technology that justify disparate treatment of broadband services provided by ILECs and those provided by cable modem providers
  - The Commission should not pick winners and losers in the broadband market

Disincentives of Broadband Regulation

- Regulation will curtail ILECs' incentive to invest in broadband technologies
- *"No company will invest billions of dollars . . . if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others"* - Michael Armstrong, AT&T CEO
- Regulation causes a domino effect in the telecom industry: lack of investment in telco networks negatively affects manufacturers of network equipment and ultimately affects consumers
- Regulation also acts as a disincentive for facilities-based competition; new entrants have diminished incentives to invest in their own facilities if the incumbent's network is readily available at below cost rates

DSL Business Case Analysis

- Prepared in April 2002 by noted economist Dr. Robert G. Harris of Law & Economics Consulting Group, Inc. (LECG)

- DSL business case analysis was a quantitative assessment of the inherent risks of DSL investments and shows how regulatory restrictions can turn an otherwise positive DSL business case negative

- Key uncertainties in the broadband market, including size of the market, DSL market share, deployment of alternative technologies, and customer churn, jeopardize an otherwise positive DSL business case, reducing cumulative discounted cash flows by as much as $1.2 billion

- An assessment of the impact of regulatory requirements that would force the RBOCs to provide DSL service at steep discounts based upon estimates of TELRIC would drive cumulative cash flows downward by $2.5 billion, seriously impairing the abilities of the RBOCs to recover their DSL investments, and thereby discouraging investment

Conclusions from the DSL Business Case Analysis

- The continued development of the high-speed Internet market depends critically upon private firms making substantial high-risk investments in an environment of technological and competitive uncertainty

- The possibility of over-regulation adds an additional layer of risk to DSL investments and will disrupt the market forces depended upon to achieve beneficial levels of innovation and investment

- If policymakers want to encourage facilities-based broadband competition through faster and broader deployment of DSL, they need to focus on leveling the playing field for all broadband providers, by removing the asymmetric regulatory risk that discourages investment in DSL

Future Broadband Developments

- Current technologies are in the infant stages
- Speeds available today are already considered by many to be slow
- Most of the applications that will generate data traffic five years from now aren't running today, at least not in any way comparable to what they will become
- TechNet, a national network of senior executives of the nation's leading technology companies, has asked the President and policymakers to set a goal of making affordable 100 Mbps broadband connection available to 100 million homes and small businesses by 2010

Future Broadband Developments Needed to Spur the Economy

- At the Commission en banc hearing last week analysts and economists gave a pessimistic telecom outlook
  - Analysts and economists told the Commission that the telecom sector is in worse shape financially than some other industries, with no easy answer for fixing the situation

- Emerging broadband will spur new applications, making the Internet a more significant and powerful part of our lives, and creating unlimited new business opportunities

- As an example, according to a new report by Kinetic Strategies, by 2006, IP telephony will be connecting an estimated 5.8 million customers with infrastructure equipment and software sales rising to more than $800M between 2002 and 2006

BellSouth's Recommendations on Broadband Regulation

- Commission should not impose unbundling obligations on broadband
  - Commission should not create UNEs for broadband
    - Section 251 should not apply to broadband facilities
    - Broadband market is highly competitive
    - Critical deployment will be hampered
  - Commission should remove all existing UNEs related to broadband
    - Line sharing
      - Subject to market demands, BellSouth will voluntarily offer line sharing at market rates
    - Line splitting
    - Limited packet switching

- Commission must also use current broadband proceedings to ensure that regulations that apply to providers of broadband services are uniform across all platforms
  - Find ILECs non-dominant in the provision of broadband services
  - Eliminate the *Computer Inquiry* obligations on BOCs when providing broadband services
  - Allow ILECs that offer a stand-alone broadband transmission service to do so on a private carriage basis rather than as common carriage

BellSouth's Recommendations on Broadband Regulation (cont.)

- Commission must establish a unified national broadband policy
  - Commission should preempt state regulation over broadband services
  - "Pocket veto by state regulators will ensure that the goals of increased competitive choice, reasonable price and availability of services will not be met. It will cause continued uncertainty in the market and prolong the telecom market's decline." (Source: Gartner Dataquest, "UNEs: Stifling US Broadband Growth and Ineffective in Promoting Local Competition," Market Analysis (Feb. 27, 2002))